

r))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 423 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH and
MR.JUSTICE H.R.SHELAT

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJUJI SOMAJI THAKOR

Versus

STATE OF GUJARAT

Appearance:

MR PM VYAS for Petitioner
MR KP RAVAL, APP for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH and
MR.JUSTICE H.R.SHELAT
Date of decision: 27/10/1999

ORAL JUDGEMENT

1. The appellant herein has brought under challenge in this conviction appeal, judgment and order dated 16/4/1992 rendered by the learned Additional Sessions Judge Ahmedabad (Rural) at Mirzapur in Sessions Case No. 146/1991, whereby the appellant had been convicted for the offence punishable under section 302 of the Indian Penal Code (for short 'IPC') and sentenced to undergo

rigorous imprisonment for life and pay fine of Rs.10,000/-, in default to undergo simple imprisonment for two years and rigorous imprisonment for a period of two years for the offence punishable under section 325 of the IPC and fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of 3 months. The appellant is referred to as the accused in this judgment. He faced charge for the offences punishable under sections 323, 326, 307, 302 and 504 of the IPC and sections 177, 183 and 184 of the Motor Vehicles Act on the basis of following brief facts alleged against him.

2. At about 1.00 O'clock in the mid night between 20/5/1991 and 21/5/1991 prosecution witnesses nos. 17 to 25 and 36 namely, Kanji Lavji, Vasantben, Savajibhai Govindbhai, Raghubhai, Chandubhai, Savitaben, Kankuben, Ranchhodbhai and deceased Lakhmanji, Thobhanji and Javanji as also Dhirubhai and others were waiting on the side of the road described as Dahegam - Naroda Highway. They were standing on the side of the road near Pardhol Patia (Bus stand-Bus stop) in the sim of Raipur village. At that time the accused driving ambassador car bearing No. GRG 1975 was proceeding on Dahegam-Naroda Highway towards Ahmedabad (Naroda being the outskirts of Ahmedabad). The labourers made the car to stop (with a view to request for a lift). The accused stopped the car and got enraged. He gave such abuses to witness Dhirubhai Jerambhai Patel as would result into breach of peace and also gave a slap to him. He pushed witness Chandubhai Bhagubhai and slapped him. Deceased Lakhmanji Dhiraji Thakor, who reached there, scolded the accused and counteracted by giving slap to him. The accused, therefore, got highly enraged, returned with his car towards Dahegam side and once again drove the car intentionally at a great speed and ran over deceased Lakhmanji Dhiraji, Thobhanji Dhanjibhai and Javanji Babaji as well as witnesses Dhirubhai Jerambhai and others with knowledge that such an act on his part would result into hurt, grievous hurt and even death of the persons so run over by the accused. This resulted into death of Lakhmanji Dhiraji Thakor after he was shifted to Civil Hospital, Ahmedabad and Thobhanji and Javanji on the spot, whereas grievous hurt to Dhirubhai Jerambhai.

3. It would appear that some information was received during the midnight between 20th May 1991 and 21st May, 1991 from the Civil Hospital, Ahmedabad, where the injured were admitted and some information was received at the Dabhoda Police Station through the concerned police Patel. We will deal with this part of the facts which have been revealed in the proceedings at

the relevant point of time. Suffice it to say here that the incident was investigated and upon conclusion of the investigation charge-sheet was filed against the accused. He was directed to the Id. Additional Sessions Judge for his trial, upon conclusion of which the accused faced conviction and sentence as aforesaid. That is how he is before us in this appeal.

4. The prosecution has examined following witnesses :-

- i. Dr. Punjabhai Chhaganbhai Patel. exh. 6, the Medical Officer, who performed post mortem in the Civil Hospital, Gandhinagar.
- ii. Jalamsing Becharsing Zala, exh. 27, Panch witness with regard to scene of offence.
- iii. Gugabhai Maganbhai, exh. 29, described as a complainant.
- iv. Badarji Dhiraji Thakor, exh. 30, described as the eye witness.
- v. Dhirubhai Jayrambhai, exh. 31, described as the injured eye witness
- vi. Chandubhai Gagubhai, exh. 32, described as the injured eye witness
- vii. Dilipkumar Natvarlal Sharma, exh. 33, Panch witness regarding Panchnama of the Car in question.
- viii. Dr. Bela Tribhovandas Patel, exh. 35, Medical officer, Civil Hospital, Ahmedabad
- ix. Dr. Vikrambhai Kalidas Parghi, exh. 41, Medical Officer, Primary Health Centre, Dabhoda
- x. Dr. Haresh Palekar, exh. 45, Medical Officer, Ahmedabad Civil Hospital
- xi. Mahmadrahaman Ansari, exh. 47, Panch witness for the spare part such as head light, ring and sealed beam of the car in question seized from the garage
- xii. Mahmadasib Abdul Rab, exh. 49, owner of the garage in the name and style of 'New Sahyog Automobiles'
- xiii. Ramanbhai Mangaldas Patel, exh. 50, Police Patel of Raipur village
- xiv. Bhalaji Babaji Thakor, exh. 52, brother of deceased Javanji Babaji
- xv. Govindbhai Jethabhai Patel, exh. 53, Sarpanch of Raipur village
- xvi. Ravjibhai Dahyabhai Patel, exh. 54, farmer requisitioning services of the labourers in his field
- xvii. Bhavansinh Shivsinh Bihola, exh. 56, Panch witness with regard to the earthern portion

scrapped out from the mudguard of the car in question for the same being examined by the expert of Forensic Science Laboratory

xviii. Kishorsinh Babusinh Rana, exh. 60, owner of the car in question

xix. Manikant Labhshankar Shukla, exh. 61, head constable, Shahibaug Police Station

xx. Dahyaji Mohanji, exh. 63, Head Constable.

xxi. Mohanbhai Dahyabhai Solanki, exh. 64, Police Constable, Dabhoda Police Station

xxii. Dahyabhai Jivanbhai Patel, exh. 66, Panch witness for the Panchnama of physical condition of the accused

xxiii. Pravinsinh Gopalsinh, Head Constable, Dabhoda Police Station

xxiv. Bhagvanbhai Kohyabhai Ahir, exh. 72, Police Sub-Inspector and Investigating Officer, Dabhoda Police Station.

5. The prosecution has also placed reliance upon the following documents :-

- i. Inquest Panchnama with regard to deceased Thobhanji and Javanji, exh. 10
- ii. Panchnama with regard to injured witness Dhirubhai, exh. 11
- iii. Panchnama with regard to clothes of deceased Thobhanji and Javanji, exh. 12
- iv. Inquest Panchnama of deceased Lakhmanji, exh. 15
- v. Receipts of the dead bodies of Javanji, Thobhanji and Lakhmanji respectively at exhs. 13, 14, and 16
- vi. Panchnama of the car in question, exh. 34 & its spare parts exh. 48
- vii. Panchnama of the car investigation by the expert from Forensic Science Laboratory, exh. 57
- viii. Despatch note of Forensic Science Laboratory, exh. 17
- ix. Despatch note of P.S.I. Dabhoda to F.S.L. exh.18
- x. Receipt by F.S.L. exh. 19
- xi. Another such receipt exh. 20
- xii. Medical certificate of injured witness Dhirubhai Jerambhai, exh. 38
- xiii. Post mortem note of Javanji, Thobhanji and Lakhmanji respectively exhs. 9, 8 and 46.
- xiv. Medical certificate with regard to Chandubhai Gagabhai, exh. 39
- xv. Covering letter with F.S.L. report, exh. 21,
- xvi. Receipt of F.S.L. exh. 22
- xvii. Report of F.S.L. exh. 23
- xviii. Letter of F.S.L., exh. 24

- xix. Biological report, exh. 25 and
- xx. Motor driving licence of the accused, exh. 26.

We will refer to the entries from the relevant police register at the appropriate point of time. The prosecution, however, placing reliance on the aforesaid pieces of evidence, canvassed before the Ld. Additional Sessions Judge about the commission of offence charged against the accused having been established beyond reasonable doubt.

The defence consisted of denial of the prosecution case while asserting that the accused was not driving the car in question at the relevant point of time and since he was not in terms with his patents-in-law and his wife, he was falsely implicated as a result of collusion between his patents-in-law and wife on one side and the complainant and others on the other side.

The Ld. Addl. Sessions Judge has placed reliance upon the eye witnesses including injured eye witnesses, who were found to have been corroborated by other pieces of evidence and circumstances. The Ld. counsel who defended the accused submitted at the threshold before the Ld. Addl. Sessions Judge that entry no. 57/91 exh. 73 should have been treated as the F.I.R. and not the complaint exh. 74. That complaint ought to have been treated as statement under section 162 of the Code of Criminal Procedure, 1973. Dealing with the decisions which were referred to by the learned counsel the Ld. Additional Sessions Judge observed from the information exh. 73 that it was merely a message received from Ahmedabad City Control by the concerned police person of Dabhoda Police Station. That consisted of information with regard to vehicular accident. That entry was received at 7.10 O'clock in the morning of 21/5/1991; whereas the complaint which was recorded at C.R. No. 105/1991 disclosed the offence punishable u/S. 302 of the IPC. Dealing with this part of the prosecution evidence the Ld. Addl. Sessions Judge has observed that Investigating Officer Mr. Ahir reached the scene of offence at 7.40 hours in the morning of 21/5/1991 and there complainant Guga Maganbhai gave his aforesaid F.I.R. bearing exh. 74. The said Investigating Officer accordingly sent the complaint for registering the offence. The complaint was received and registered at 9.15 O'clock in the morning. Thus, the Ld. Additional Sessions Judge has come to the conclusion that the exh. 73 is merely an information (Wardhy) and not the first information report; whereas the exh. 74 is the information with regard to commission of offence

(congruizable). He, therefore, came to the conclusion that exh. 74 was not hit by section 162 of the Criminal Procedure Code. Discarding the submissions of the learned counsel accordingly, the LD. Addl. Sessions Judge has proceeded to appreciate the evidence.

6. It was submitted on behalf of the accused that even the report u/S. 157 of the Criminal Procedure Code (for short 'Cr.P.C.') was received by the learned Judicial Magistrate First Class two days after the date of incident and, therefore, on account of such delay no reliance could be placed upon exh. 74 treating the same as first information report. Reference was made to a couple of decisions of the Hon'ble Supreme Court in the case of Bir Singh v. State of U.P. reported in AIR 1978 S.C. 59 and Ishvarsing v. State of U.P. reported in AIR 1976 S.C. 2423. The LD. Addl. Sessions Judge has considered both the decisions while visualising facts before the Hon'ble Supreme Court and the facts before him. He came to the conclusion that in the facts of the case, it could not be found that the facts of the complaint were after-thought. He has observed that most of the witnesses were labourers and incapable of concocting facts. He, therefore, accepted the explanation of the prosecution that there was a delay of two days in sending report u/S. 157 of Cr.P.C. through oversight. The LD.A.S.J. has also considered the decision in the case of Apran Joseph @ Currentu Kunjukunju and ors. v/s. State of Kerala reported in AIR 1973 S.C. page 1 and observed that question of delay and its effect on the prosecution case would depend upon facts of each case. In the light of the submissions so made on behalf of the defence the LD. Addl. Sessions Judge has discussed the evidence of the aforesaid witnesses and has come to the conclusion that the prosecution has established its case beyond reasonable doubt. He has dealt with the medical evidence as well as evidence of post mortem examination of the three deceased at length and has observed that the said evidence would corroborate the prosecution story stated by the eye witnesses and the injured eye witnesses. He has accordingly held the accused guilty of the offence as aforesaid.

7. We may note at this stage that the State preferred enhancement Appeal bearing Criminal Appeal No. 593 of 1992. However, that was dismissed on 19/10/1992. The Bench said at the threshold that upon going through the judgment, record and proceedings no case for enhancement was likely to have been made out. Before the reasoned order could be dictated, Mr. Trivedi, the then learned Public Prosecutor stated that he would not invite

reasoned order and, therefore, leave was refused and appeal was dismissed.

8. Under the aforesaid circumstances, we are now required to deal with this appeal. We have heard Mr. P.M. Vyas, learned advocate for the appellant - accused and Mr. K.P. Raval, Ld. A.P.P. for the State. As in the trial Court here also the main attack against the conviction and sentence received by the accused is against the First Information Report exh. 74. The submission is that the information which was received at the threshold both at the Shahibaug Police Station through the police personnel of the said police station as well as at Dabhoda Police Station through the police personnel of that police station were merely the information with regard to occurrence of vehicular accident resulting in the deaths of Thobhanji and Javanji and injuries to Lakhmanji, Dhirubhai J. Patel and Chandubhai Gagubhai. The said information does not indicate commission of any offence by the accused. It has, therefore, been submitted that the recording of complaint through witness Gugabhai Maganbhai P.W. 3, exh. 29 is an improvisation so as to implicate the accused. Mr. Vyas therefore read the evidence of said witness as also the connecting evidence revolving round what should be treated as First Information Report. In reply, Mr. K.P. Raval, Ld. A.P.P. read before us the evidence of P.W. 19 Manikant Shukla, exh.61, P.W. 8 Dr. Belaben exh.35 and P.W. 4 Badarji Dhiraji Thakor exh. 30. According to his submission the facts which have come to light at the earliest point of time have also emanated from the evidence of Badarji and Manikant. We propose to deal with both these sets of evidence which relate to the controversy as to the first information regarding commission of the offence attributable to the accused. We might first deal with the prosecution evidence which has presented exh. 74 as the F.I.R. That has arisen from the statement of Gugabhai Maganbhai P.W.3, exh.29 read with evidence of the Investigating Officer Bhagwanbhai K. Ahir P.W. 24 exh. 72. This is what the Investigating Officer Mr. Ahir has stated with regard to the F.I.R./complaint exh. 74: He has testified that when he was present in the Dabhoda Police Station head quarter on 21/5/1991 he received information entry from P.S.O. Dabhoda at 7.15 in the morning. That entry is exh. 73 and would indicate that a wireless message was received from Gandhinagar Control to the effect that Ahmedabad City Control had been informed through police head constable Manikant that at 1.30 O'clock in the midnight between 20/5/1991 and 21/5/1991 one person driving ambassador car had struck his car

injuring three persons and two persons died on the spot at the place of the incident, that the names of the dead persons had not been received and that immediate action might be taken. We might note at once that this information is as per the information exh. 62 (Wardhy) recorded by the police head constable Manikant at the relevant point of time at Ahmedabad. Having received such message the Investigating Officer reached the scene of offence at 7.40 hours in the morning and recorded complaint of Shri Gugabhai Maganbhai, which then appeared at mark 5/1. That document was presented to the witness who identified the thumb impression of the complainant. At this very stage there was an objection from the defence for exhibiting the said document by treating it as the F.I.R. Keeping the question open, the Ld. Addl. Sessions Judge received the document at exh. 74. The witness further testified that he sent exh. 74 for the same being recorded in Dabhoda Police Station. That complaint was recorded at 8.15 hours in the morning. Witness then inquired about the Crime Register number at which exh. 74 was recorded and he was informed that it was C.R. No. 105/91. He, therefore, arranged for making inquest report and in anticipation of the permission from the concerned Executive Magistrate he made the inquest report with regard to the dead body of Thobhanji Fhanaji and Javanji Babaji during the period between 8.30 and 9.30 hours in the morning. The dead bodies were thereafter sent for post mortem with necessary Yadi. He also came to know about Lakhmanji having died during his treatment in Civil Hospital, Ahmedabad. He recorded the statements of witnesses Kanjibhai Lavjibhai, Vasantben Dhanajibhai, Savajibhai Mohanbhai, Govindbhai Maganbhai, Chandubhai Gagubhai, Savitaben Mulajibhai, Kankuben Ranchhodbhai and others. He then returned to Dabhoda Police Station and arranged for sending Muddamal to the Forensic Science Laboratory 9F.S.L.). He also recorded statement of Dhirubhai Jayrambhai, injured witness, on 22/5/1991. He was cross-examined at length in respect of his action right from the inception. Upon making reference to the station diary he admitted that he started from police station at 7.15 O'clock in the morning of 21/5/1991 and returned at 10.00 O'clock at night on 22/5/1991. He also admitted that a note was made for going for making investigation regarding C.R.No. 105/91 at 10.55 O'clock in the morning of 23/5/1991. He denied the suggestion that the complainant gave his complaint after 5.00 O'clock in the evening of 21/5/1991 and not in the morning at around 8.30.

9. We, therefore, proceed to examine whether any timings have been stated in exh. 74 itself. Having gone

through the original exh. 74 we find that only the date 21/5/1991 appears at the top of this document. It contains thumb impression of the witness Gugabhai Maganbhai, who is stated to have given the complaint. At the bottom of this document there is an endorsement of S.D.P.O. (Sub-Divisional Police Officer) and the date marked by the side of this endorsement is 22/5. We have to bear in mind this circumstances while appreciating the evidence of the I.O. and witness Gugabhai Maganbhai for detailed submissions have been made from both these pieces of evidence by the learned advocate for the appellant as well as the Id. A.P.P. for the State.

10. We would at once switch over to the evidence of Gugabhai Maganbhai P.W. 3 exh. 29 who has deposed that he accompanied with his co-workers Thobhan, Govind, Jeram, Chandu, Lalu, Savaji and 5 to 6 female workers went to village Raipur for labour work on 21/5/1991. There is no dispute with regard to the date 21/5/1991 as having been noted with reference to the midnight between 20/5/1991 and 21/5/1991. There has been no dispute with regard to the witness and other workers having had gone to village Raipur for labour work earlier to 21/5/1991. They were working in the field of one Ravjibhai at Raipur. They had started for going back home during night time on 20/5/1991. It was at around 1.30 O'clock at night when they were waiting for a vehicle from the side of the main road. Seeing vehicle lights on the road, the witness felt that it was a heavy vehicle. He, therefore, signalled the vehicle to stop (with a view to request for giving lift). When the vehicle stopped it was noticed that it was a small taxi. Dhirubhai, a co-worker had requested the vehicle to stop. The driver of the taxi (car) became angry and asked why the car was stopped. Saying so the driver slapped Dhirubhai. The witness then identified the driver being the accused present in the Court. Chandubhai who had been at the place, apologised and requested him (accused) to let go. In the meantime Javanji and Lakhmanji who were staying in the houses located nearby the road, reached the place. They asked the accused why he was beating the labourers. Saying so Javanji slapped the accused addressing him that he was knowing him and that he was son-in-law of village Pardhol (of a person belonging to village Pardhol). To that the accused challenged to be ready and that he was returning. He then drove the car back to Dahegam side. On account of the threat which the accused gave, the witness asked Javanji and Lakhmanji to wait there since the witness and his co-workers were afraid. Javanji and Lakhmanji, therefore, waited there. Some time thereafter the accused rushed to the site driving the car with full

speed. At that time all the aforesaid persons were standing on the side of the road. Lakhmanji, Javanji and Thobhanji were in one line. Keeping the lights of the car on, the accused ran it over the persons so standing there. This caused Javanji and Thobhanji dying on the spot. Lakhmanji was taken to Ahmedabad Civil Hospital where he died. Chandubhai and Dhirubhai were injured and admitted to the Civil Hospital by village Sarpanch Govindbhai, who had taken them in a tempo. Witness was then shown the aforesaid complaint and he identified his thumb impression. In his cross-examination the witness has admitted that there were no light poles at the scene of offence and that the full light of the car affected their vision. Upon being asked about what was the description of the accused, who was present in the Court, the witness replied that since the accused had quarrelled at the site they knew him. He was around 5 ft. in height and thin in build and that after having seen him at the time of incident he was seeing him first time in the Court. Badarji reached the place of incident after Thobhanji died. Badarji's house was also located nearby the road. He had gone to call the Sarpanch. 2 to 3 persons also accompanied police Patel from Raipur. Badarji accompanied Dhirubhai and Chandubhai, the injured persons who were taken to Ahmedabad. Sarpanch was informed that since there was a quarrel with the accused, he deliberately killed the aforesaid persons. Badarji was also knowing about it. He explained that Badarji had gone back from the place of the incident when accused had returned towards Dahegam side with the car, since Badarji's house was nearby the road. He explained that under such circumstances, Badarji came back to the place of incident after the accused had caused the accident. The witness admitted that he did not state in his complaint about Javanji having given a slap to the accused saying that he was knowing him as he was son-in-law of village Pardhol. He admitted that he did not go to the police station for giving his complaint, but when the police reached the place of incident he had given his complaint. He then admitted that the police recorded his complaint at 5.00 O'clock in the evening of the next day. He has deposed that he had gone to Civil Hospital after the incident and reached there at about 3 to 4 O'clock in the early hours (of 21/5/1991). Since there were his co-workers waiting at the place of incident he returned there. He has admitted that when he returned at the place of incident at 5.00 O'clock in the evening, the dead body of Thobhanji was lying nearby the place of incident (Patia). After he so returned to the place of incident, the dead body of Thobhanji was taken to Gandhinagar Civil Hospital. He admitted that

statements of other persons were recorded after his complaint was taken. He has deposed that they had remained present near the place of incident till upto 9.00 O'clock at night. When he reached the place of incident at 5.00 O'clock in the evening Police was interrogating Savajibhai and others. He has described the incident by saying that the bumper of the car struck the aforesaid persons who were thrown off on the side. He admitted that he did not state in his complaint that he asked Javanji and Lakhmanji to wait there as they were afraid and that Chandubhai addressed the accused saying that they (workers) committed mistake and they should be let off. He admitted that after striking the car to the aforesaid persons the car had been driven away. He denied the suggestion that some unknown driver caused the accident and ran away. He also denied the suggestion that he did not talk with the accused at the time of the incident. He finally denied the suggestion that he gave the complaint after arranging the facts. He deposed that he did not have any talk with Badarji in the hospital. We may note here that if the statement of this witness is not treated as F.I.R., his evidence as an eye witness cannot be discarded and that has to be assessed on its own merits. See Somappa v. State of Mysore AIR 1979 S.C. 1831.

11. Bearing in mind the aforesaid evidence the evidence of I.O. Mr. Bhagvanbhai Koyabhai Ahir, P.W. 22 exh. 72 might be read in so far as recording of the F.I.R. exh. 74 is concerned. He in terms stated that he recorded F.I.R./complaint exh. 74 at 8.15 hours in the morning as stated above. He has referred to the preparing of inquest reports after recording of the complaint and the inquest report exh. 10 refers to the timings 8.30 to 9.30 in the morning of 21/5/1991. In this document C.R. No.105/91 is also noted. This inquest Panchnama is with regard to dead bodies of Thobhanji and Javanji. It would appear from the narration of inquest Panchnama that there was no reference with regarding to unfolding of facts as appearing in the complaint exh. 74; instead there is reference of accident having taken place resulting into death of these two persons. This circumstance will have also to be borne in mind while appreciating evidence of Investigating Officer. It is no-doubt true that reference has been made to C.R. No. 105/91, which C.R. No. was given after the FIR/complaint was reported to the police station officer and after obtaining the information with regard to such C.R. No. from the P.S.O. Reference has also been made to the notes of information recorded in the police records. The

Investigating Officer, however, has denied the suggestion that the complaint was recorded at 5.00 O'clock in the evening on 21/5/1991 and not at or around 8.30 O'clock in the morning as deposed to by him. He also denied the suggestion that statements of the witnesses were recorded and the Panchnama of scene of offence was also made prior to the recording of the complaint exh. 74. He admitted that the statements of Govindbhai Maganbhai and Savajibhai Mohanbhai Koli Patel were recorded in the afternoon of 21/5/1991 and that Govindbhai Maganbhai and Savajibhai Mohanbhai were respectively shown as Panch witnesses for Panchnamas exhs. 10 and 28. It would, therefore, appear from the evidence of the I.O. that he recorded the complaint exh. 74 in the morning hours of around 8.15 to 8.20 of 21/5/1991. Explaining the variation between evidence of witness Gugabhai Maganbhai and witness I.O. Mr. K.P. Raval, Ld. A.P.P. for the State has shown to us from the record the statement of Gugabhai Maganbhai having been recorded on 22/5/1991 for saying that witness Gugabhai Maganbhai might be mistaking the recording of statement with the recording of complaint in his cross-examination.

12. We have noticed from the impugned judgment and order of the Ld. Addl. Sessions Judge, that upon appreciation of evidence he has accepted exh. 74 as the FIR/complaint of witness Gugabhai Maganbhai. We bear in mind the conclusions and observations of the Ld. Addl. Sessions Judge in this respect while further dealing with the submissions of Mr. K.P. Raval, Ld. A.P.P. for the State, which arise from the facts disclosed in the civil hospital at Ahmedabad, when the injured persons were brought there. In our opinion that would assume a great deal of importance while dealing with which document should be treated as the FIR.

13. Mr. K.P. raval, Ld. A.P.P. first read before us evidence of Manikant Labhshankar Shukla, P.W. 19, exh. 61. It has to be noted that this witness, who happened to be the Head Constable of Shahibaug Police Station, cannot be said to be concerned in any manner with any of the parties. When he was on night duty at Shahibaug Police Station on 21/5/1991 he received a Wardhy to the effect that some car driver had struck some persons near Pardhol bus stand at about 1.30 O'clock at night and Lakhmanji Dhiraji, Dhirubhai Jayrambhai and Chandubhai Gagabhai were injured and brought in the Civil Hospital at Ahmedabad and they were referred to Ward E-4. Now that Wardhy is at exh. 62, which ultimately was recorded in the Dabhoda Police Station at exh. 73. This Warthy is a very important document. It recites that Dr.

Belaben Patel from Civil Hospital (Ahmedabad) informed Police Constable Ramjibhai, buckle no. 6536, who gave the Wardhy to the effect that some ambassador driver had dashed against the persons described in the Wardhy at around 1.30 O'clock at night near Pardhol Patia (bus stand) and the injured persons were brought to the Civil Hospital and referred to Ward E-4, and that they were Lakhmanji Dhiraji, aged around 43 years, residing at Raipur, Taluka District Gandhinagar brought at 3.10 O'clock at night and injured near eyes and left side of the body, Dhirubhai Jayrambhai, aged 30 years, residing at Karsangadh, Taluka Limbadi, District Surendranagar brought at 3.25 O'clock at night and found to have sustained injuries on his nose, head and legs and other parts of the body and Chandubhai Gagabhai, aged 35 years, who sustained blunt injuries on his body. The E.P.R. Nos. of all the 3 injured persons have also been noted in the Wardhy.

14. Having received the Wardhy as aforesaid witness Manikant Labhshankar Shukla went to the hospital and found that witness Badarji had brought the injured persons to the hospital. He recorded statement of Badarji, who informed him that the car driver quarrelled with the labourers and, therefore, he (Badarji) and his brother Lakhmanji had been informed about the quarrel. Lakhmanji, therefore, went to the place of incident and soon thereafter Badarji also went there. At that time car driver and the labourers as also Lakhmanji were amidst quarrel. Badarji, therefore, persuaded the car driver who had returned with his car. Soon thereafter he drove the car with full speed and open door and ran over the persons standing there. Two persons had fallen there and there and Lakhmanji and other two labrouers were injured and they were brought by Badarji to the Civil Hospital. He stated to the witness Manikant about the injuries sustained by Lakhmanji, Dhirubhai and Chandubhai. It is true that in his cross-examination the witness admitted that he did not send the statement as part of the information to Dabhoda Police Station and that he recorded it as statement and not as information. What is important to be noted from the evidence of this witness is that he recorded the statement of Badarji bringing out the facts concerning the manner in which the accident took place much before 8 O'clock in the morning of 21/5/1991 when his duty hours were over. This would, in no uncertain terms indicate that Badarji's statement was recorded by this witness before 8.00 O'clock in the morning of 21/5/1991. In all probability the statement must have been recorded at or around 4 O'clock in the early morning of 21/5/1991. The reason why we would like

to give effect to the evidence of witness Manikant Labhshankar Shukla is that he has recorded the Wardhy as well as statement of Badarji in the natural course of events and he has been supported by Badarji also in that respect. He is in no way concerned or connected with the parties or witnesses. It is a different matter that he has not treated the statement of Badarji as part of information required to be sent to Dabhoda Police Station at the earliest. That, however, will not have the effect of discrediting the evidence of this witness. On the contrary, frank admission of the witness about he having noted the facts from witness Badarji by way of his statement would go to show that the witness was not trying to over reach or twist the actual happening of the events.

15. Badarji P.W. 4, exh. 30 has deposed that he was at home at around 1.00 O'clock at night, when the incident in question had taken place. His house is located in the field nearby the Patia (bus stand) on the road. Some female persons informed him that one taxi driver was beating them. He, therefore, went to the place of incident. Before he reached there Lakhmanji and Javanji had already reached the place of incident. When he reached there, the accused and the labourers were exchanging words. After they were separated the accused had taken the car back towards Dahegam side. It was ambassador. The witness waited there till the accused went back towards Dahegam side and then returned home. Lakhmanji and Javanji waited there. Before or by the time he reached home and when he was at a distance of about 25 ft. from the road, the car came back with full speed from Dahegam side and upon turning back and seeing he noticed that the car ran over the persons who were standing near the place. He, therefore, ran to the place of incident and found Javanji and Thobhanji having died and his brother Lakhmanji being alive in injured condition. Dhirubhai and Chandubhai were also injured. He, therefore, went in his six seater tempo to the village and called Sarpanch Govindbhai and police Patel Ramanbhai to the place of incident and had immediately taken Lakhmanji, Dhirubhai and Chandubhai to the Civil Hospital at Ahmedabad. Lakhmanji died in Civil Hospital during his treatment. After his post mortem, the dead body was brought home. He has in terms stated that he was interrogated in the Civil Hospital itself. After the dead body was cremated, Dabhoda Police had interrogated him. He identified the accused as the person driving the car at the time of incident. In his cross-examination he said that he had known the accused for two years since deceased Javanji belonged to village Pardhol where the

accused was got married. He has in terms testified that his statement was recorded by the police on two occasions. He, however, admitted that he did not state before the police in his first statement that he knew the accused as he was frequently visiting the village where he was married. He admitted that he did not state in his first statement that he knew the accused as he was visiting the Tea Cabin of Javanji located on the road nearby his house for taking tea. He also admitted in his second statement that he did not state that he knew the accused because he was frequently coming to his in-laws' place. Finally he deposed that he first went to Govindbhai with his six seater tempo and Govindbhai asked him to give report to Police Patel. He and Govindbhai went to Police Patel Ramanbhai's house and he informed Police Patel about the incident. The Police Patel, however, did not say about the writing of report, but Police Patel gave report to the Police in the morning when he was in Civil Hospital. It can be seen from this evidence that he had an occasion to give his first statement to the police at Ahmedabad Civil Hospital (Manikant Labhshankar Shukla, P.W. 19). That statement was given by him when he was in the Civil Hospital at Ahmedabad. He also testified that he narrated the facts of the incident to the Police Patel. At this stage we might note that for reasons best known to Police Patel, he did not narrate all the facts in the information which he had given to the concerned police personnel of Dabhoda Police Station. We need not detain ourselves to this part of the evidence for it has not been brought out in the cross-examination of Badarji that he did not narrate all the facts of the incident to the Police Patel. On the contrary, Badarji specifically stated in his cross-examination that he informed about the incident to the Police Patel. Having gone through the entire evidence of both these witnesses, namely Manikant and Badarji, it has become crystal clear to us that the facts with regard to how incident occurred were first disclosed by Badarji to Manikant who recorded the same by way of his statement. As a matter of fact, the facts with regard to commission of offence were brought to light much before 8.00 O'clock or 8.15 O'clock in the morning of 21/5/1991 when complaint exh. 74 was recorded. It would, therefore, clearly appear that the facts with regard to how the incident occurred were disclosed in the natural course of event in Civil Hospital at Ahmedabad before the Head Constable of Shahibaug Police Station Mr. Manikant Shukla and in our considered opinion that should form part of the FIR, matters not that the statement of Badarji has reached Dabhoda Police Station after around 3 days from the date of incident. This aspect of the

matter clearly appears to have escaped the attention of all concerned at the trial. We, therefore, find that Wardhy (information) exh. 62 read with statement of Badarji should form part of the FIR. In any case the facts with regard to how the incident occurred have come to light at the earliest point of time and in natural course of events and they would assume a great deal of importance while assessing the evidence of the eye witnesses and injured eye witnesses. At this very stage we note that Badarji has also not disclosed the name of the accused in the narration of the facts given by him to Manikant Labhshankar Shukla. In our opinion that would be quite natural as in Indian society even in the moments of distress and pains a witness would feel hesitant for implicating, even rightly, a person who happens to be son-in-law of the village to which one or the other witness belongs. It would be so despite the fact that there might be differences or disputes between the person (son-in-law) and his in-laws (father-in-law and others). Whereas such personal and domestic disputes would not lead to the inhabitant of the village to falsely implicate such a person, it would be quite natural for him to express hesitation about disclosing the name of such person at the earliest. Be that it may, the facts as to how incident occurred have come to light at the earliest point of time and in the natural course of events.

16. We, therefore, observe and conclude as under :

Exh. 62 refers to ambassador car driver having struck the persons standing on the side of the road near Pardhol bus stand during night time at 1.30 O'clock between 20/5/1991 and 21/5/1991 and caused injuries to 3 named persons as aforesaid. We, therefore, find that exh. 62 has to be treated as the information about injuries caused to the named persons on account of the ambassador car driver causing the accident as aforesaid. The statement of Badarji recorded soon thereafter by witness Manikant Labhshankar Shukla as disclosing the facts how the incident occurred at the earliest point of time should also be treated as part of the F.I.R. At this stage it has to be noted that in accident cases the information that would first reach to the police authorities in the usual course of events would ordinarily be about the occurrence of vehicular accident and if injuries caused to a person or persons as a result thereof, facts with regard thereto might appear. Such an information itself would not indicate commission of cognizable offence, since apart from the fact that death or deaths are caused or injuries are caused, accident would remain as an accident and may ultimately turn out

to be so as a result of failure of mechanism of the vehicle, or as a result of some natural course or Act of God or as a result of rash and negligent driving on the part of the driver of the vehicle or as a result of some deliberate act on the part of the driver of the vehicle. Unless specified facts concerning any of these contingencies are placed before the police authorities, it could hardly be said that the information with regard to vehicular accident would amount to information regarding cognizable offence. It is no-doubt true that exh. 62 impliedly indicates about the ambassador car driver having struck the persons standing on the side of the road; any of the contingencies referred to hereinabove, however, does not expressly appear in exh. 62. However, they appeared at the earliest in the statement of Badarji, which ordinarily should have formed part of the FIR as stated above. It might be noted that two police stations were concerned with regard to the incident in question, one is Shahibaug Police Station sending information received from the Civil Hospital Ahmedabad and another is Dabhoda Police Station within whose jurisdiction the incident occurred. Naturally there would be inter-se communications with regard to what came to the notice of the respective police personnel and that might result in some delay here or there.

17. Mr. Vyas, learned advocate for the accused referred to the decisions of the Apex Court in *Bir Singh v. State of U.P.* reported in AIR 1978 S.C. 59, *Ishwar Singh v. State of U.P.* reported in AIR 1976 S.C. 2423 and *Mohd. Abdul Hafeez v. State of U.P.* reported in AIR 1983 S.C. 367. He also referred to a decision of this Court in the case of *Karsan Gove v. State* reported in 1976 (17) G.L.R. 316. From these decisions he submitted that the delay in recording FIR would throw doubt about the prosecution story which cannot be accepted so as to establish the guilt of the accused beyond reasonable doubt. Having noted the circumstances of the present case, we would refer to following excerpt head noted from para. 10 of the decision of the Hon'ble Supreme Court in the case of *Atmaduddin v. State of U.P.*, 1974 Criminal Law Journal, p. 1300 :-

"Although the F.I.R. was given to the police officer available in the village and recorded at the wrong police station within two and half hours of the incident resulting in murder and there had been some inevitable delay in view of the fact that it had to be properly lodged at another police station, held that it could not be said that there was any delay in the F.I.R. being furnished."

In the present case we have already noted that there is

hardly any notable delay in bringing to light the facts regarding how the incident occurred.

The Learned Additional Sessions Judge has also dealt with some of the aforesaid decisions and considered the same. In view of the discussion with regard to the prosecution story as flowing from witness Manikant Labhshankar Shukla and witness Badarji as noted hereinabove, we are of the confirmed view that the prosecution story has been unfolded at the earliest point of time and that has taken natural shape as almost the parallel story came to be disclosed at two different places, one in the Civil Hospital at Ahmedabad and another at the scene of offence, before two different police authorities.

Section 154 of the Code of Criminal Procedure deals with First Information Report (information in cognizable cases). It would be treated law to say that F.I.R. is based upon the earliest version of cognizable offence and the object is to obtain early information of alleged criminal activity lest it might be forgotten and embellished. Absence of the name (of the accused) in F.I.R. would not be of much consequence, especially the same would be disclosed in full during the course of investigation. In the present case at some point of time on 21/5/1991 when the inquest of dead bodies of Javanji and Thobhanji came to be made the name of the accused was disclosed in the statement of not one witness, but in the statements of number of witnesses. The manner in which the incident occurred also came to light and the facts so stated run parallel to the facts stated by witness Badarji and his statement before witness Manikant Labhshankar Shukla recorded in the Civil Hospital, Ahmedabad. This would go to indicate without any doubt that there was no scope for false implication of the accused in this matter. In the present case the witnesses are villagers and some of them are even agricultural labourers and the ocular account they had rendered can be described as one rendered with simplicity without there being any well planned deceit.

18. With these observations we proceed to consider the evidence of eye witnesses including injured eye witnesses, since Mr. Vyas has read the evidence of such witnesses for saying that the same could not be accepted by the Ld. Addl. Sessions Judge. We have just said that their evidence should be evaluated as that of rustic villagers and agricultural labourers. With this observation we might first deal with the evidence of injured witness P.W. 5 Dhirubhai Jayrambhai exh. 31 and injured witness Chandubhai Gagabhai, P.W. 6, exh. 32.

19. Witness Dhirubhai Jayrambhai has deposed about

the facts of the prosecution case as have been noted hereinabove. He happened to be one of the labourers who had gone to attend to the work in the field at village Raipur. He has deposed that he had an occasion to signal the ambassador car to stop. The driver stopping the car came out of the car and started abusing the witness and addressing him as to why his liquor car was stopped. He had caught hold of the witness and slapped him. Chandubhai intervened and, therefore, he also slapped Chandubhai. The female persons who accompanied the witness had gone to call the persons from the nearby houses. Lakhmanji and Javanji thereupon reached the site and asked the accused why he was beating the labourers. The accused got enraged. Hence, Lakhmanji slapped the accused. Javanji said that the driver was Raju, son-in-law of village Pardhol and, therefore, he knew him. Lakhmanji then told that he should be let off, since they were all brothers, being Thakors. The accused thereafter drove his car towards Raipur. Soon thereafter he brought back the car driving it at a great speed and ran over the witness, Thobhanji, Chandubhai, Lakhmanji and Javanji, who were standing on the side of the road. This witness was injured on his nose, head, waist portion, both the legs and thighs. He then became unconscious. He returned to senses on the next day in the Civil Hospital at Ahmedabad. He came to know that Chandubhai, Lakhmanji and Javanji were injured and Thobhanji and Javanji died on the spot; whereas Lakhmanji died in the hospital. In his cross-examination he admitted that he did not state before the police that the accused stated about why his liquor car was stopped. That Javanji was saying that driver was Rajuji, son-in-law of Pardhol and, therefore, he was knowing him and that Lakhmanji asked to let off the driver, since they were brothers being Thakors was also not stated. It would appear from the evidence of this injured witness that he had the occasion to witness the incident. He had no reason to falsely implicate the accused. He identified the accused as one who was known to him. Despite the omissions as stated above, we find that the evidence of this witness has rightly been accepted by the Ld. Addl. Sessions Judge and we have no reason to discard the same under the circumstances noted hereinabove.

20. Witness Chandubhai Gagubhai has deposed about he having also witnessed the incident. He is also one of the labourers and despite the omissions in his earlier statement as aforesaid, we do not find any reason for not accepting his evidence. This witness sustained blunt injuries and was discharged from the Civil Hospital at

Ahmedabad during early hours of 21/5/1991. When he returned to the place of incident from the Civil Hospital after he was discharged at about 4.00 O'clock in the morning of 21/5/1991, he was accompanied with Gugabhai and Lakhmanji's son. According to his version they reached this place of incident at around 9.00 O'clock in the morning on 21/5/1991. We might recollect that Gugabhai, who accompanied this witness in the morning to the place of incident is none else than the aforesaid complainant. However, we need not detain ourselves to deal with this circumstance for recalling the incident with regard to whether exh. 74 should be treated as F.I.R. or not.

21. The direct evidence in the form of aforesaid injured witnesses as also witnesses Gugabhai Maganbhai and Badarji Dhiruji Thakor, who were also eye witnesses is amply supported by the other pieces of evidence. We have noted the relevant exhibits of the medical witnesses in the opening part of this judgment. We have also noted the exhibits of the post mortem reports. The Ld. Addl. Sessions Judge has at length dealt with the nature of the injuries and the medical opinion with regard thereto. It would not be necessary to repeat the same. It would be plain to observe that the medical evidence clearly lends supports to the prosecution case and nothing contrary could be brought out either at the trial or by Mr. Vyas, learned advocate for the accused before us. We, however, would like to make a note of two important documents: one is the sketch of the scene of offence and the place of incident exh. 78 and another is the Panchnama of the scene of offence and place of incident exh. 28. Having gone through both the documents, we find that they fully corroborate the prosecution version about the incident inasmuch as the scene of offence is quite on the side of the main road described as Dahegam-Naroda Road. It would be significant to note from Panchnama exh. 28 that no brake marks could be noticed so as to show that it was a case of accident, may be a case of accident arising on account of rash and negligent driving, with regard to which detailed submissions have been made by Mr. Vyas without saying even at this stage that that would be the defence of the accused. The sketch would indicate cross roads ahead of scene of offence, towards Dahegam side. One cross road leads towards Raipur village and another cross road leads towards Pardhol village. In any event a person driving a car coming from Dahegam side would have to pass through these cross roads for reaching the place of incident. Therefore, the submission of Mr. Vyas that there is discrepancy in the evidence to the effect that one witness said that the accused who drove the car at an

excessive speed and ran over the persons standing near Pardhol bus stand came from the side of Raipur when he returned and other referred to the accused returning accordingly from Dahegam side would not make any difference.

22. Then there is evidence of witnesses who had the occasion to attend to the car. They are Mahmadasib P.W. 12, exh. 49, garage mechanic, Mahmadrahaman P.W. 11, exh. 47 Panch witness with regard to spare parts of the car in question seized from the above witness, Kishorsinh B. Rana, car owner P.W. 18 exh. 60 and Ravjibhai D. Patel, P.W. 16, exh. 54, owner of the field where all the workers had gone to attend to the work of taking crop. The witnesses who were connected with the car in question have amply corroborated the prosecution story inasmuch as Mahmadasib, garage mechanic deposed that the accused had approached him with the damaged ambassador car saying that his car had struck a buffalo and Kishorsinh B. Rana, the car owner, said that he had entrusted the car to the accused on the fateful day. According to his version he had given the car to the accused on 19/5/1991 as he was required to go to attend a marriage occasion of a close relation at the relevant point of time. On 25/5/1991 he came to be informed that his car met with an accident. Both the witnesses identified the accused.

23. Having discussed the aforesaid salient features of the prosecution case and gone through the evidence adduced by the prosecution we now proceed to consider the other evidence, reference to which has been made by Mr. Vyas. Mr. Vyas first made reference to the evidence of Sarpanch Govindbhai Jethabhai Patel, P.W. 15, exh. 53. Referring to his evidence Mr. Vyas submitted that this witness has spoken to occurrence of accident and has not revealed any other facts as to how accident has occurred. According to his submission, in the ordinary course of events this witness would have come to know about the fact with regard to how the accident occurred since Badarji was in his company and Badarji told him about the incident. It might be noted that he has not deposed as to what Badarji told him regarding incident. He has conveniently kept silence about the statements of facts of accident made by Badarji to him. It is a different matter that he described the incident as an accident. We might recall that the witness happens to be Sarpanch of village Raipur and might be disinclined to implicate the accused who happens to be son-in-law of village Pardhol. The evidence of this witness as commented upon by Mr. Vyas does not take the defence any further. Then there is evidence of Police Patel Ramanbhai Mangaldas (Mukhi)

P.W. 13, exh. 50. Similar is the comment of Mr. Vyas learned advocate for the accused in so far as oral testimony of this witness is concerned. However, it would be interesting to note that in the evidence of this witness reference is made to ambassador car driver having dashed the persons standing nearby the house of Badarji on the side of the road. He has referred to the report which he made to Dabhoda Police Station, placed in the record of the case at exh. 51. Exh. 51 speaks about the vehicular accident without referring to the car being ambassador car. It does not refer to the detailed talk Badarji had with this witness. It is not understandable how the witness had remained silent about the particulars of the talk Badarji had with him. It is possible that this witness also being a witness from village Raipur might be sentimentally inclined not to disclose the facts revealed by Badarji at the earliest point of time. Be that it may, in view of the circumstances noted hereinabove, the evidence of this witness also does not take the defence any further. Mr. Vyas then made a reference to the evidence of Pravinsinh P.W. 3 exh. 69, who recorded the N.C. (non-cognizable complaint) given by the accused while he was in custody, Panch witness Dayabhai Jivabhai Patel P.W. 22 exh. 66 regarding the person of the accused and the complaint itself exh. 71. For the purpose of accepting the submissions of Mr. Vyas that this complaint could never have been recorded when the accused was in custody, we are required to deal with these pieces of evidence. At the out-set we may say that if the evidence of non-cognizable complaint and the witness in respect thereof is accepted, that would bring in the role played by the accused at the time of incident from the mouth of the accused himself. In any case, even if these pieces of evidence are not accepted, it would not adversely affect the prosecution case as could be noticed from the eye witnesses and the injured eye witnesses. The Ld. Addl. Sessions Judge has dealt with this part of evidence at length, but we feel that we should not deal with this evidence as it could be said that the accused was made to give complaint in a manner which would lead to extracting his confession while he was in custody. We, therefore, reiterate that even if this part of evidence is not taken into consideration, prosecution case as supported by the evidence noted hereinabove does not stand adversely affected.

24. We may now proceed to consider lengthy submissions of Mr. Vyas on order passed by the Ld. Addl. Sessions Judge below exh. 84. Exh. 84 is the application given by the accused at the stage when the matter was for judgment before the Ld. Addl. Sessions

Judge and the judgment was in progress. By this application the accused expressed that the heirs and legal representatives of deceased persons and injured Dhirubhai and Chandubhai had preferred compensation applications before the Motor Accident Claim Tribunal through the advocate Mr. D.T. Dave and the applications were registered at M.A.C.P. Nos. 943/91, 944/91, 945/91, and 946/91. The accused wanted the Ld. Addl. Sessions Judge to allow production of the copies of these applications and to recall the witnesses, if necessary. He, therefore, requested the Ld. Addl. Sessions Judge to postpone the pronouncement of the judgment. The Ld. Addl. Sessions Judge has rejected this application saying that almost 3/4th of the judgment was already dictated. He has also assigned reasons to the effect that ordinarily the victims would like to get compensation and for that purpose they would make statements as per the say of advocates/legal advisers. In that view of the matter, filing of the applications for compensation as stated by the accused would not make any difference so far as the prosecution case was concerned.

25. Mr. Vyas submitted from the narration of the applications that the applicants came out with a story that the injured persons sustained injuries on account of rash and negligent driving of the accused and the prosecuting agency presented a twisted version of the accident. We asked Mr. Vyas as to whether the accused wanted to set up a defence that he having been involved in driving of the ambassador car at the time of the accident resulting into deaths of three persons and injuries to two persons as aforesaid would be guilty of rash and negligent driving. Mr. Vyas submitted that he did not want to set up such a defence, but he wanted to present an alternative possibility that would emanate from the prosecution evidence if the application of the accused was entertained and the injured witnesses were recalled for being cross-examined on the strength of the applications for compensation. In our considered opinion the Ld. Addl. Sessions Judge has given a cogent reason about statements made by the applicants in the applications as per the legal advice that they might have received for the purpose of getting compensation. We do not find any substance in the submissions of Mr. Vyas since the prosecution story gets support from the independent witnesses, who were agricultural labourers. Besides, evidence of witness Manikant Labhshankar Shukla, witness Badarji and witness Gugabhai would have still remained undisturbed even if it is assumed that the injured witnesses would turn hostile in the face of their

applications for compensation. We see no reason to entertain the application exh. 84 at this belated stage and allow any searching inquiry being made by recalling the witnesses. There is another aspect of the matter. There is every possibility of defence putting questions to the injured witnesses by making suggestion about presence of the accused at the time and place of the incident. Perhaps such a course of cross-examination on the part of the defence might prejudice the other limb of the defence about total denial on the part of the accused. Ofcourse, we have already noticed the same and discarded it. In that view of the matter, we find it unnecessary to entertain application exh. 84. In any view of the matter the order of the Ld. Addl. Sessions Judge on exh. 84 does not need interference.

26. Mr. Vyas lastly submitted that at best offence punishable u/S. 304 of the IPC could be said to have been made out. We are unable to accept this submission in view of the facts of the prosecution case as appearing from the evidence already discussed. We are, therefore, unable to accept this submission of Mr. Vyas.

27. In the result, this appeal fails and the same is accordingly dismissed.

* * *

PVR.